IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

Crl.MC.No. 3725 of 2006()

AGAINST THE ORDER DATED 05/10/2005 IN CMP. 2305 /2005 IN CC.149/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, PONNANI

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PETITIONER:

VELLAYIL SAJNA, W/O.SADIK,
MARANCHERI P.O., PONNANI, MALAPPURAM DISTRICT.

BY ADV. SRI.M.P.VIJAYAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3725 of 2006

Dated this the 12th day of December 2006

O R D E R

The petitioner has come to this court with this petition under Section 482 Cr.P.C, aggrieved by the impugned order, a copy of which is produced as Annexure 1.

2. The petitioner had complained of a theft which had taken place in his premises. Mos 1 to 18 - gold ornaments and gold ingots were produced before the learned Magistrate as ornaments thieved/ingots obtained after melting of ornaments thieved. Mos 1 to 15 are the ornaments. Mos 16 to 18 are the gold ingots. The learned Magistrate by the impugned order directed that Mos 1 to 15 be released to the petitioner subject to conditions. But so far as Mos 16 to 18 are concerned, the learned Magistrate felt that they being ingots, need not be released in the custody of the petitioner. The learned Magistrate, it would appear, felt that the petitioner can have no use of the gold ingots as they were to be produced before the court at later stages of the trial. The trial against some of the accused is already over. Others have not been apprehended and the case against them has been transferred to the list of long pending cases. The alleged theft had taken place as early as in 1997.

3. The learned counsel for the petitioner submits that indefinite and uncertain retention of the gold ingots in the custody of the court awaiting the apprehension of the accused persons would virtually put in jeopardy the rights of the petitioner as he cannot get back the gold ingots which legitimately belong to him. The learned counsel for the petitioner, in these circumstances places reliance in the decision in Sunderbhai Ambalal Desai v. State of Gujarat [AIR 2003 SC 638]. He particularly places reliance on proposition 3 which appears in paragraph 7 which reads as follows:

> "In our view, the powers under Section 451 Cr.P.C should be exercised expeditiously and judiciously. It would serve various purposes namely:-
> 1. .....
> 2. .....
> 3. If the proper panchnama before handing over possession of article is prepared that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail."

4. The learned counsel for the petitioner submits that it would be injustice or the worst variety if the victim of the theft were to be denied his right to keep possession of the stolen article even after nine years of the theft on the sole ground that some of the co-accused have not been apprehended. Until the co-accused are apprehended, it is not necessary to deny the petitioner his right to keep possession of, use and convert, if necessary, the gold ingots which admittedly belong to him.

5. I find merit in the prayer made by the learned counsel for the petitioner. I am of the opinion that this is a fit case where even the gold ingots can be released to the petitioner subject to appropriate conditions. Such conditions must be imposed which would ensure that preposition 3 referred above is satisfied and evidence about the gold ingots can be introduced when later the accused are apprehended and trial against them are conducted. It is not necessary, according to me, to insist that the petitioner must specifically return the gold ingots released to him. It is sufficient if he is asked to execute a bond for the value of the gold ingots which he seeks release of.

In the result:

a) This Criminal Miscellaneous Case is allowed in part.

b) The learned Magistrate is directed to release the gold ingots Mos 16 to 18 to the petitioner subject to appropriate conditions and safeguards as explained in Sunderbhai Ambalal Desai v. State of Gujarat [AIR 2003 SC 638] referred above and the observations earlier made in this order.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006